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Clinton Home Loan Deal May Violate Federal Law (No Wonder They're Reconsidering It)

President and Mrs. Clinton have signed a contract to purchase a $1.7 million house in Chappaqua, Westchester County, New York. The Clintons are making a $350,000 down payment and borrowing $1.35 million from Bankers Trust Company. That loan will be secured by a mortgage on the property and by a $1.35 million deposit to Bankers Trust that will be made by Terry McAuliffe, a friend of the Clintons and a major fundraiser for Democrats.

Last Friday, the *Wall Street Journal* reported that the Clintons may be renegotiating their loan so they will not have to rely on the beneficence of money-man McAuliffe. In truth, a new deal may be required because the original McAuliffe-backed deal is illegal.

The Clintons have never lived in New York, but Mrs. Clinton is now considering a run for one of New York's two seats in the United States Senate. Her exploratory committee was formed before the contract for the house was signed. She has not, however, formally announced her candidacy. Mrs. Clinton does not need to live in New York State to *run* for election to the Senate, but she *must* live in the State on the day of the election in order to qualify for election. U.S. Const., Art. I, sec. 3, cl. 3. Some formalities, however, cannot wait until election day. Mrs. Clinton's name will not magically appear on the ballot on November 7, 2000. New York law requires candidates to qualify for the primary ballot as early as next summer. See, Federal Election Comm'n, *Ballot Access 2: For Congressional Candidates* at NY-1 (1995). Then, too, there are the essential informalities. Mrs. Clinton knows, as we all know, that voters are less likely to vote for a candidate (or to put her on the ballot) if she does not live in their State.

The Federal Election Campaign Act (FECA) restricts the amount of money that an individual may lawfully contribute to a Senate candidate or her campaign. That limit is $1,000 per election. 2 U.S.C. §441a(a)(1)(A). The contribution limit applies to announced candidates and persons who are "testing the waters" before formally announcing their candidacy. 11 C.F.R. §100.7(b). It is unlawful for an individual to give or lend $1.35 million (or any amount over $1,000) to Mrs. Clinton's exploratory committee or campaign committee.

Of course, Mr. McAuliffe did not write a check to Mrs. Clinton's committee, or even to Mrs. Clinton herself. It will be argued, therefore, that he did not make a campaign contribution. Unfortunately for that view of the transaction, Federal election law is not that naive.

For purposes of FECA, a "contribution" that is subject to the limits of the act "includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. . . ." 2 U.S.C. §431(8)(A)(i). That definition includes gifts and loans which are ostensibly personal. 11 C.F.R. §100.7(a).

The key phrase, "for the purpose of influencing any [Federal] election," is not otherwise defined by FECA, and there is not any legislative history that would be helpful. See, *Buckley v. Valeo*, 424 U.S. 1, 77 (1976). The factors that the Federal Election Commission (FEC) has used in finding that an activity is "for the purpose of influencing" an election "are too varied to be usefully described by a shorthand expression." Advisory Opinion 1999-11 (concurring opinion of three commissioners). Congress and the FEC apparently believe that the words are to be used in their everyday sense without further elaboration.

Perhaps, somewhere, there is a prince of gullibility who believes that McAuliffe's loan was *not* "made . . . for the purpose of influencing any election for Federal office" even though the loan allows the Clintons to buy an expensive house in a State where they have never lived but where Mrs. Clinton has set up an official exploratory committee. We do doubt that the FEC will be so gullible; indeed, it has shown itself unsympathetic to similar types of arrangements:

In the spring of 1977, Ray Kogovsek was considering a run for Congress. On June 1, he lost his job, and during the following few weeks he borrowed a total of $3,900 from ten individuals and used the money for "personal and family living expenses." Later, Mr. Kogovsek did announce his candidacy and asked the FEC for an opinion about those loans. The FEC said:

> "The Commission concludes that these loans are contributions for purposes of the Act. Therefore the loans must be disclosed in reports filed by the [campaign committee], and the amount contributed (loaned) by any individual with respect to any election must not exceed $1,000." [Advisory Opinion 1978-40 (citations & footnote omitted).]

Indeed, the FEC has taken the position that loan guarantees made *after* an *unsuccessful* election are "for the purpose of influencing" an election — even when the candidate has promised *never* to run again. *Federal Election Commission v. Ted Haley Congressional Committee*, 852 F.2d 1111 (9th Cir. 1988) (upholding an FEC determination that loan guarantees made by friends of the unsuccessful candidate, who borrowed money to pay off his campaign debts, were subject to FECA's contribution limit of $1,000).

The financing deal for the Clintons' New York house ought to be restructured. (The Conservative Campaign Fund of McLean, Virginia already has filed an FEC complaint against Mrs. Clinton and her exploratory committee.) This time, the Clintons and their bankers ought to see if they can stay within a million dollars of the $1,000 line that is drawn in the law.

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